

REMARKS

By the foregoing amendment, it is proposed to add the features of claims 3 and 4 to claim 1. No new issues are raised by these amendments because claims 3 and 4, as previously presented, depended, respectively, from claim 1 and claim 3. Hence, the amendments to claim 1 represent, in essence, the presentation of claim 4 in independent form.

Claims 3 and 4 are being cancelled as redundant with entry of the requested amendments to claim 1.

All of the other claims in the case (claims 2, 5-14 and 17-23) remain unchanged. These claims are, however, presented herein with amended claim 1 pursuant to the new amendment practice.

The Examiner is requested to reconsider the Section 103 rejection of record, particularly in view of the proposed amendments to claim 1. As the Examiner has recognized, the applicants' invention is concerned with a blend of a health component comprising a mixture of ursolic acid and oleanolic acid obtained from fruit skins, together with a glyceride component. Ursolic acid and oleanolic acid tend to give compositions containing them an off flavor. The applicants have discovered that this is due, not to the acids themselves, but to natural apolar and/or low molecular weight components in the acids as extracted from fruit skins. None of the Examiner's references is concerned with the off flavor encountered with prior art extracts of ursolic acid and oleanolic acid and there is clearly nothing in the cited art suggesting that the off flavor of such extracts could be avoided by removing natural apolar and low molecular weight components from the acid extracts. For all the art teaches, the off flavor could be caused by the acids themselves.

The amendments to claim 1 serve to highlight the unobviousness of the applicants' invention in that there is nothing in the Examiner's references suggesting the blending of a mixture of ursolic acid and oleanolic acid as defined with 5 to 80 wt % of one or more components selected from mono-, di- and triglycerides with the glyceride part of the blend displaying a solid fat content measured by NMR-pulse on a non-stabilised fat at the temperature indicated of :

5 to 90 at 5°C

2 to 80 at 20°C and

less than 15 at 35°C.

In brief, it is respectfully submitted that the Examiner's references do not in any way make the combination of features called for in claim 1 obvious. The deficiencies of U.S. Patent 5,948,460 (the '460 patent); U.S. Patent 4,752,606 (the '606 patent) and SU 827066 have previously been detailed by the applicants. The further features added to claim 1 emphasize differences over the references and should warrant withdrawal of the Section 103 rejection and allowance of the claims.

In the Advisory Action, the Examiner states that U.S. '606 and SU '066 teach extracting ursolic and oleanolic acid in the same manner as the applicant. The Examiner concludes from this that the acids of the art would have the same characteristics as the acids in the applicants' compositions. The Examiner then concludes that it would be obvious to use the acids of U.S. '606 or SU '066 in the compositions of U.S. '460 because U.S. '606 and SU '066 "teach that their acids have a high purity content". However, what the Examiner is overlooking is that there is no suggestion in the art that the extracted acids of SU '066 or U.S. '606 even if they "have a high purity content" as the Examiner presumes would avoid the undesired off flavor encountered with ursolic acid and oleanolic acid. The Examiner has erroneously presumed that the prior art knew that the off flavor of ursolic and oleanolic acids extracted from fruit skins is due to impurities rather than the acid themselves. Thus, even if the extractions of the references somehow removed the offending natural and low molecular weight components which the applicants have found causes the off flavor in extracted acids, there is no reason to think that the acids of U.S. '606 and SU '066 would avoid off flavor. Hence, there is no motivation in the art to use the acids of U.S. '606 or SU '066 in the compositions of U.S. '460, particularly since none of the references is concerned with the off flavor encountered with prior art extracts comprising ursolic acid and oleanolic acid. Furthermore, even if the acids of the secondary references are used in the U.S. '460 compositions, the applicants' compositions with the indicated glyceride component, as now claimed in claim 1, would not be obtained.

With respect, it is submitted that the Examiner should withdraw the Section 103 rejection in view of the foregoing comments. The Examiner's references, and their

deficiencies, have been previously discussed. Briefly stated, the '460 patent discloses the addition of one or more compounds selected from oleanolic acid, ursolic acid and plygodial to a flavored product, particularly a diet drink, containing an artificial sweetener, to reduce the aftertaste from the use of the artificial sweetener. The additive may be used as a purified product or as a crude extract from plants.

While '460 is concerned with the undesirable aftertaste caused by artificial sweeteners, the patent says nothing about the undesirable off flavor which is introduced by using plant extracts of ursolic acid and oleanolic acid. Since the '460 patent is not concerned with the applicants' problem, the patent cannot suggest the applicants' solution to the problem or make the solution obvious to one in the art even if the Examiner's other references are considered.

The '606 patent relates to pharmaceutical compositions which contain oleanolic acid for treating ulcerogenic disorders. The patent does not disclose the use of ursolic acid with oleanolic acid. The oleanolic acid used in the '606 patent may be obtained by extraction from plants, e.g. grape husks (see Col. 5, lines 1-3 and Example 1). There is no teaching in the '606 patent to use mixtures of ursolic acid and oleanolic acid in any way, much less with a glyceride as called for by the applicants' claims. Furthermore, there is nothing in the '606 patent to indicate that there would be any ursolic acid with the oleanolic acid when the latter is extracted. Additionally, there is nothing in the references to indicate any off flavor problem with oleanolic acid or any solution to such problem.

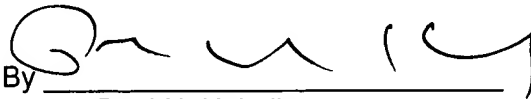
The same is true for SU 827066. This reference describes the preparation of ursolic acid by extraction from catmint. There is no reference in SU 827066 to oleanolic acid or any indication that such acid would be present in catmint in admixture with the ursolic acid as extracted or otherwise. Furthermore, there is no reference to the problem of off flavor in extracts of ursolic acid and oleanolic acid.

Finally, nothing in any of the references suggests that the off flavor resulting from the use of extracts of ursolic acid and/or oleanolic acid would be due to natural apolar and/or low molecular weight components in the extracts. For all the art teaches, the acids themselves could be the reasons for the off flavor.

In view of the foregoing, the applicants request entry of the present amendment and withdrawal of the Section 103 rejection. If the Examiner does not withdraw the rejection, entry of the amendment for appeal purposes is requested.

Respectfully submitted,

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